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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,034	02/02/2000	ROBERT JOHN BLYTHE	PAR20013	1407

7590

04/23/2002

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CLEVELAND, OH 44114-2518

EXAMINER
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GRAY, JILL M

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 04/23/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

MF-9

# Office Action Summary

Application No.

09/485034

Applicant(s)

Blythe et al

Examiner

Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 2-1-02
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 10, 15, 17, 19 and 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Thelen et al. 4,564,310 or Japanese Patent Abstract JP 4048927 is maintained .

Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 92/19669.

Bowers teaches a polymeric material of the type contemplated by applicant, wherein said polymeric material can be used as a construction material and in the formation of a warring course, said material comprises agglomerates if a thermoplastic elastomer, as a block copolymer of the styrenetype and a polyurethane binder which substantially fills the interstices between the granules, wherein the particle size is within applicants claimed range. In addition, Bowers teaches an underlying bulk layer having a thickness within claimed range. Properties such as the granules being angular or multi-facet granules inherent.

Applicant's arguments filed February 1, 2002 have been fully considered but they are not persuasive.

The 102 rejections from the previous office action are maintained.

Applicant argues that the references all use polymers which are not thermoplastic elastomers and so therefore cannot be used in the instant invention. However, in claim 1 applicant merely claims a construction material comprising an agglomerate of granules of a thermoplastic

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elastomer. The styrene butadiene rubber of the WO '669 reference is a thermoplastic elastomer. The reference points out the use of these as granules in a wearing course along with polyurethane as a binder. See page 5, line 1. Applicant argues that the SBR polymers are not the same as the styrene copolymers as instantly claimed. Applicant has only claimed the SBS copolymers in instant claims 7, 8 and 9. The specific copolymers are not a part of claim 1. Therefore the previous rejections are maintained. THE GB 2023624 reference shows that the rubber particles are elastomeric materials.

The 112 rejection of the previous office action is withdrawn.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Gray whose telephone number is (703) 308-23681. The examiner

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can normally be reached on Mondays through Thursdays and alternate Fridays from 8:30 to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly, can be reached on (703) 308-0449. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

A handwritten signature in cursive script that reads "Cynthia H. Kelly".